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DOES THE STATUTORY ACTION FOR DEATH ABATE BY THE SUBSEQUENT DEATH OF THE BENEFICIARY?

This question has been answered both affirmatively and negatively by American courts.

American statutes giving the right of action had their rise or suggestion in Lord Campbell's Act (9 and 10 Vict. c. 93) and mainly are copied therefrom. By English decision it has been ruled that: "Lord Campbell's act gives a new cause of action clearly, and does not merely remove the operation of the maxim, *actio personalis moritur cum persona,* because the action is given in substance, not to the person representing in point of estate the deceased man, who would naturally represent him as to all his own rights of action which could survive, but to his wife and children, no doubt suing in point of form in the name of his executor." Seward v. Vera Cruz, 10 L. R. (App. Cas.) 59. This reasoning loses nothing of its force, but is accentuated by the fact that the beneficiary must sue, as some of the statutes provide, in his or her own name.

The conflicting American courts resort to varied reasoning for their conclusions, but in none of the opinions do we find that sort of stress laid upon common law principles, as guides or aids, which reasonably should be expected to appear. We are much impressed in the making of this criticism by an observation in a late Missouri opinion as follows: "After a careful consideration of these (opposing) cases and the reasons advanced by the courts for so holding, the conclusions reached in all of them seem to me unsound, and do great violence to the elementary principles of the common law and the statutes providing for the survival of actions." Gilkeson v. Missouri Pac. R. Co., 121 S. W. 138. The Missouri Supreme Court held that the right of action did not survive the death of the beneficiary entitled to sue.

It is to be said that the court cites and quotes from several opposing cases but from none of its way of thinking, and the only common law principle it discusses is that contained in the maxim above quoted. It might be said, therefore, that much is left to be desired in explanation of the manner in which "great violence to the elementary principles of the common law" has been done. A diligent search on our part has only found three cases where like conclusions to that of the Missouri court were reached and these rather by force of statutory intent from particular phraseology than as based on common law principles. See Loague v. R. Co., 91 Tenn. 458; Schmidt v. Woodenware Co., 99 Wis. 300; Dillier v. R., 34 Ind. App. 52. There are plenty of cases holding, that the action does not survive the death of the wrongdoer, because the statute does not specifically so provide. These are collected in Bates v. Sylvester, 205 Mo. 493, 104 S. W. 73, 11 L. R. A. (N. S.) 1157, 120 Am. St. Rep. 761, but that is a wholly different question.

We have nowhere seen the principle of survival better stated than in the Seward case, but the general proposition is strongly supported in general reasoning in the cases of Cooper v. Shore Electric Co., 63 N. J. L. 558, 44 Atl. 633; Meekin v. Railroad, 164 N. Y. 145, 58 N. E. 50, 51 L. R. A. 235; Thomas Admr. v. Gas Co., 112 Ky. 569.

But independently of the reasons given in these cases, to us it seems there are cardinal principles in the law of contract, which should carry the action over beyond the death of the beneficiary. Sir William Blackstone, in speaking of implied contracts, says that "those charged on one by the sentence, or assessed by the interpretation, of the law" are such. And: "Whatever, therefore, the laws order any one to pay, that becomes instantly a debt, which he hath beforehand contracted to discharge." 3 Black. Com. 159.

What was the common law situation as to the death of a human being? Notwithstanding that a wife or a child was entitled to be supported by husband or father, and therefore, his life was of pecuniary value in either relation, his death, however caused, was *damnum absque injuria.* Statutes have changed this, not entirely, but to the extent of saying that a wrongdoer, yet alive, shall provide compensation for that death to the party bereft of its value. In other words, the wrongdoer contracts "beforehand" to pay the penalty therefor.

An action for a penalty was never deemed other than an action *ex contractu,* and it differed only from a debt on a simple contract in the manner pointed out by Field, J. "The action of debt lies on a statutory penalty, because the sum demanded is certain; but though in form *ex contractu* it is founded in fact upon a tort" which basis relieved merely from the necessity of establishing a joint liability. But it can scarcely be claimed that vesting one with the right to a penalty arises in any other way than *ex contractu.* Its true basis is the statute giving it. See Chafee & Co. v. U. S., 18 Wall. 516.

The Supreme Court of North Carolina said: "The action of debt was an appropriate remedy upon all legal liabilities upon simple contracts, whether written or unwritten * * * and upon statutes by a party grieved whenever the demand was upon a sum certain or capable of being readily reduced to a certainty." Katzenstein v. R. Co., 82 N. C. l. c. 695.

Is it an answer to say this action is not given for a penalty, if it should be thought that strictly the exaction is not a penalty, and then resort to some refinement to show the distinction? Whether it be a penalty in the strict sense or not, the right of recovery lies only in a statute as distinguished from right by privity under general principle of law. As said by the Kentucky Court of Appeals it "attached, and, being attached, descended at his death, with his other personal property." Thomas' Admr. v. Gas Co., supra.

Neither does it seem to be an answer that common law pleadings are abolished, for rights of action still spring from tort or contract. A right of action by a statute is a right resting on contract, where it authorizes recovery for a wrong not done to the plaintiff. There is no actionable wrong, in legal principle, for any injury done to a third person, and this principle was not deviated from, at common law (where is found the embodiment of our general legal principles) by the fact that the third person sustained a domestic relation to the plaintiff. Opinions of courts, therefore, which fail to discuss the question of the contract right, created by these statutes, resemble the play of "Hamlet" with the Prince of Denmark left out.

NOTES OF IMPORTANT DECISIONS.

BROKER — EXCLUSIVE AGENCY. — The case of Blumenthal v. Bridges, decided by the Supreme Court of Arkansas and reported in 120 S. W. 974, concedes that where real estate is placed in the hands of a broker or agent for sale in the ordinary way without specifying any definite period within which the agent is to have the exclusive right to sell, this does not deprive the owner of the right to sell the land himself, but it is ruled that this principle does not govern in a contract expressly stipulating for a definite period of time within which the agent may make a sale, the court saying this implies an exclusive right to sell within the time named, and with no right in the principal to revoke the agency, unless there is an express reservation to this effect.

The distinction here seems quite acute, as is seen by the court saying: "If the principal cannot, under a contract of this kind, stipulating a definite time within which the sale may be made, revoke the agency directly, it follows that he cannot do so indirectly by making a sale of the property himself, thereby putting it beyond the power of the agent to perform the contract."

There is no direct authority cited by the Arkansas court, and to us it appears the court has two principles confused. Thus an authority not definite as to time merely gives a broker a right to offer the property, but it is not exclusive in any sense. If time is fixed that is an exclusive agency, so far as other

agents are concerned, but to bar the owner himself from selling the authority should be express. The court seems to carry the implication too far. Thus it was held in White & Hoskins v. Benton, 121 Iowa, 354, that where an owner first listed property with an agent, reserving specifically the right to sell himself, his afterwards limiting the time to 24 hours for a sale by the broker for a certain time did not suspend this reservation. See also Ingold v. Symonds, 125 Iowa; 82, 99 N. W. 713; Taylor v. Martin, 109 La. 137, 33 So. 112; Evans v. Gay (Tex. Civ. App.), 74 S. W. 575.

MASTER AND SERVANT—PLACE RENDERED UNSAFE BY INDEPENDENT CONTRACTOR.—The case of Thomas v. Cent. Ry. Co., decided by Supreme Court of Montana, reported in 122 N. W. 456, suggests the inquiry as to how far the obligation is upon the master to secure a safe working place for his own servants to see that an independent contractor shall not by his own operations on the premises make such premises dangerous. The facts of the case show that defendant's servant was injured by the explosion of a defective boiler placed on the premises by an independent contractor. The court said: "Had this particular boiler been operated by the defendant, its obligation to plaintiff would have required an inspection thereof and an exercise of reasonable care to keep it in condition suitable for its work. Though the boiler was not an instrumentality furnished by defendant for use by its employees, it permitted it to be placed upon its premises, where its servants were at work, thus, in its defective condition, rendering the place of work unsafe, and the duty of inspection existed." In the case of Burnes v. R. Co., 129 Mo. 41, where the place was made unsafe by employees of an independent contractor in leaving an obstruction that caused an injury, the duty of the master seemed to be viewed very much like that of a city as to its streets. The court said, if the obstruction had been where it was "long enough that a reasonable inspection or supervision would have detected or removed, then defendant should be held liable." That does not, however, afford a great deal of light, because the fact of who placed it there could not make much difference. Here the boiler was in its proper place, but it was not a proper implement of work in that place. Was the defendant bound to the same degree of inspection that the independent contractor as to his own servants should have made? The Magdaline, 91 Fed. Rep. 798, shows an independent contractor creating conditions by the very nature of his work, which rendered the place dangerous. That looks like a conscious surrounding of the servant with dangerous agencies. The case of Sackwitz v. Am. Biscuit Co., 78 Mo. App., seems to go some further than the Burns case in its reasoning, but as the master's foreman saw the fault immediately that rendered the place unsafe, what was said was obiter. None of the cases show that inspection of appliances of an independent contractor should be made for the mere purpose of securing safety of the working place, and it is reasonable to suppose there should be some difference in this repsect. An appliance might be dangerous to a servant, but not dangerous to a servant's working place. A defect in a tool making it dangerous to the user might also be dangerous to those surrounding him, but injury of this latter sort might be considered so remote as not within fair contemplation. Therefore inspection of an independent contractor's machinery might not devolve on a master having control of the premises. The court in the principal case said as a matter of law such master owed the duty of inspection. It rather seems there was here a mixed question of law and fact for the jury.

DISBARMENT—DIVISION OF FEES BETWEEN LAYMAN AND LAWYER.—The late case of In re Shay, 118 N. Y. Supp. 146, is on the line of our recent annotation in Holland v. Sheehan, 69 Cent. L. J. 115. In the latter the question concerned a suit by the layman under his contract with the lawyer because the latter failed to account according to his contract to divide money collected in contingent fee suits brought to the lawyer by the layman. The Minnesota Supreme Court denied recovery on the ground that the contract was opposed to public policy and void. Our annotation was upon the line of performance, in pursuance to such a contract, being barratrous on the part of both, and we criticised the somewhat milk-and-water style of the courts in treating such questions. We have not much to complain of, in this way, about the decision in the Shay case. Its judgment however leaned to mercy and the reason therefor thus appears:

"It has been urged, in extenuation of this offense, that it is a practice which is common among members of the profession who are engaged in the prosecution of negligence cases, and that it is unfair to visit upon the offender who has first been brought before the court upon a charge of this character the extreme punishment of disbarment; and a majority of the court are of the opinion that this fact should be considered, and that, instead of disbarment, the respondent should be suspended from practice for one year.

Such suspension will therefore be the punishment inflicted in this case. We wish it to be distinctly understood, however, that, after this expression of the views of the court upon the nature of the offense, the considerations that have influenced a majority of the court in deciding upon this punishment, rather than disbarment, will not be considered upon any future conviction of practice of this kind. All concur."

The New York court had under consideration a statute making it a criminal offense for an attorney himself or by another person to promise or give to any person a valuable consideration as an inducement for placing a claim in his hands, and it was urged this statute did not forbid an attorney soliciting business by himself or his hired agent. The Shay case quotes from a case in New York Court of Appeals on that subject as follows:

"It is said that the law permits attorneys to solicit business, and hence that there is no valid reason why they should not be permitted to pay agents to solicit business for them. But for nearly a century the law has prohibited them from obtaining retainers by offering or giving any valuable inducement whatever to the desired clients themselves, for the plain reason that such conduct tends to stir up litigation which might not otherwise arise, and because needless litigation has always been deemed a public evil. It is equally manifest that the employment of paid agents has the same tendency. Where, as in the case at bar, the remuneration of the agent depends upon the number of retainers he procures, the strongest motive exists on his part to incite the assertion and prosecution of claims that might otherwise never be heard of. Nor is there anything in the suggestion that the employment of such paid emissaries is essential to the protection of the poor, who else might not become aware of their right to prosecute remedies in the courts for wrongs which they may have suffered. The permission which the law now gives to attorneys to serve clients for a contingent fee is sufficiently well known throughout the community to enable anyone, however limited in his means, to secure adequate professional service in the enforcement of any meritorious claim in the courts. It is not necessary for the protection of the poor to sanction the practice which, as applied to negligence cases under the name of 'ambulance chasing,' has brought deserved discredit upon those engaged in it; and in any event, if the views which have been expressed are correct, the law denounces the practice as criminal."

Our theory of barratry, urged in our annotation is thus seen to have the approval of one of the most eminent courts in the country, and it appears from the above extract that the phrase "ambulance chasing" has annexed to it something in the way of judicial cognizance.

COMPENSATION OF ATTORNEYS.

Introduction.—In Rome, as between patron and client, the former served without compensation except such as the latter was bound to render him at all times by virtue of the relation. This idea was evidently carried from the civil law into England, for the services of barristers and physicians were deemed to be gratuitous. As a result, they were not entitled to any legal claim for compensation. The barrister was dependent on the presents which a client saw fit to give.[1] They are incapable of making contracts for compensation, nor can they sue for a reasonable value of their services. Compensation of attorneys, however, is regulated by statute, and attorneys may make contracts for same either in gross, per cent, or as a salary. In the United States, on the other hand, members of all branches of the legal profession are entitled to a fair compensation for their labors.[2]

This latter view seems to be the correct one. However desirable it might be to have a body of men who would dispense knowledge of the law gratuitously, this would not, under present conditions, be advisable or practicable. Business life, as a whole, has assumed immense proportions; law has kept pace with this development. Every vocation and profession demands persons fitted to pursue that particular line of work, and this is especially true of the legal profession. This profession should be made up of those persons who are deeply interested in the law and are willing to give their best energies to its acquirement and mastery. Of necessity, it will not be possible to secure this class of men, unless

(1) Adams v. Stevens, 26 Wend. (N. Y.) 451.
(2) Cyclopedia of Law and Procedure, vol. 4, p. 979.

they may receive compensation for their labor; for in the nature of things it is not reasonable to suppose that only well-to-do men are the persons fitted for this work. Hence we may safely conclude that it is productive of better results to give the attorney the right to look to his client for compensation than to make him dependent upon donations from the latter.

The Right Founded on Contract.—This right to compensation must be founded on a contract, i. e., an agreement of the parties. The attorney is an exponent of right and justice as laid down by the law; he has an intimate knowledge of this law; he knows it is not just or lawful for one person to obtain remuneration from another for services—no matter how valuable—unless the latter has an opportunity to accept the proffered services. If this be true and just as to those not versed in the law, it should be doubly so in the case of an attorney. For it would be not only inconsistent with the general principles of law but also highly unconscionable were the law to permit attorneys, who are conversant with its provisions, to be exempt from these provisions, but at the same time holding such provisions to be applicable to other persons under similar circumstances.

Express Contracts.—The attorney should, where possible, make an express contract covering all the terms of the employment, and this includes the matter of compensation. In many cases, this is a matter better settled at the time of employment, for the client has a right to know what the approximate costs will be. Again, it will prove to be preventive of disputes, which it is to the interest of the attorney to prevent, if possible.

If compensation is fixed after the termination of the suit or subject matter of the employment, the client may often think that the attorney overvalues his services and thus the dissatisfaction of a single client may be very detrimental to the success of the attorney. The latter owes it not only to himself but also to his profession to prevent just such misunderstandings. As he conducts himself, just so will it redound to or detract from the good name of himself and of his profession. Therefore, when the attorney has once made the contract, he should be ready and willing to perform his part with the utmost good faith. He must do this in order to maintain the dignity of himself, the profession, and the law. To do otherwise would bring the law into disrespect, a condition which would be subversive of the interests of good government. Thus where an attorney agrees for a stated compensation to do certain work, and later it is proved that his services were of more benefit than was anticipated, he should stand by his contract and accept the agreed compensation, though it may be inadequate in proportion to the benefits conferred or the labor expended.[3] But where the agreement provides for certain work, it may become advisable for the attorney to perform some extra labor beyond the terms of the agreement in order to serve best the interests of the client. In that event, the attorney should procure the assent of the client, which would entitle him to additional compensation upon such performance.[4] Circumstances may arise, however, which would make performance either impossible or inexpedient. For many reasons, it may become advisable for an attorney to withdraw from the employment. This should not be done without the consent of the client except in extreme cases. If such consent is given, the question arises whether the attorney is entitled to compensation for the services rendered. This would depend upon whether any benefits had been conferred upon the client.

If so, the attorney should be paid what these were reasonably worth. Under no circumstances should he demand the full contract price for he has not given the value he agreed to deliver.

Ordinarily attorneys would do well to trust to the honor of their clients to pay their compensation after the fulfillment of

(3) Coopwood v. Wallace, 12 Ala. 790. McIlroy v. Russell, 24 S. W. (Ky.) 3.

(4) Isham v. Parker, 29 Pac. (Wash.) 835.

the contract. Cases often arise, however, where the labor and expense to which an attorney is put is such as to justify his accepting a retainer or part compensation in advance.[5] To deny him this right would, in many instances, deprive not only the attorney, but also the client, of the fruits of a well-prepared plan of action. However, an attorney ought not to accept a retainer in a case when he believes that the law is against his client. It is not his duty in order to subserve the interests of his client, to misstate the facts, and if he be satisfied that the client cannot recover except by perverpared plan of action. However, an attorney ought not to accept a retainer in a sion of the law and the facts, the attorney ought not to take the case.[6]

Contingent fees have been looked upon with disfavor. As is well said by a learned author: "It reduces the attorney from his high position as an officer of the court and a minister of justice to that of a party litigating his own claim, and he is thus tempted to disregard the ordinary rules of professional conduct, and to make success at all hazards and by all means, the sole end of his exertions. It changes the position of the parties from attorney and client to that of partners. It is an undue encouragement to litigation, and men who would not think of entering on a lawsuit if they knew that they must compensate their lawyer whether they win or lose are ready upon such a contingent agreement to try their chances with any kind of a claim.... It turns lawyers into higglers with their clients, and in order to drive a favorable bargain with the suitor the attorney is tempted to magnify the difficulties of the case, and thus take advantage of the very confidence which led the client to intrust his interests to him."[7] Nevertheless, this must not be taken as an absolute rule. Much, of course, will depend upon the individual attorney. He should be so broad-minded and just that his honesty of purpose cannot be called into question and whatever charge he might make should be fair and reasonable. Just what percentage would be considered reasonable must, of necessity, depend upon the facts and circumstances of each particular case; for what might be fair in one instance might be exorbitant in another.

But attorneys must not provide that they will prosecute the litigation at their own cost and expense, for this would be an inducement to try to win at any cost,[8] and to that extent tend to overthrow the very purpose of the judicial system. For these reasons, the courts always look upon contingent agreements with jealousy and scrutinize the transaction to see that the charge is not extortionate or unconscionable and will not enforce them if inequitable to the client.[9]

Implied Agreements.—Many instances arise where it would be a hard matter for an attorney to determine at the time of entering the contract of employment the extent and difficulty of the subject matter involved. Unforeseen complications may disclose themselves. In such cases, to fix a definite sum as the compensation might prove a gross injustice to the client on account of an over-estimation by the attorney of the intricacies and possibilities of the question in issue. On the other hand, the attorney might under-estimate the labor involved and thereby be unjust to himself. In short, there are many cases in which the question of compensation must be an open one. For this purpose, the law will imply from the contract of employment a promise by the client to pay what the services are reasonably worth. This contract, in the absence of express agreement, may be made out from all the attendant circumstances. In this respect, attorney's contracts form no exception to the general rules govern-

(5) Reed v. Mellor, 5 Mo. App. 567.

(6) Smith v. C. & N. W. Ry. Co., 15 N. W. (Ia.) 291.

(7) Sharswood, Legal Ethics, pp. 160-163.

(8) Phillips v. S. Park Com'rs., 10 N. E. (Ill.) 230.

(9) Taylor v. Bemiss, 110 U. S. 42; Allard v. Lamirande, 29 Wis. 502.

ing implied contracts, nor is there any valid reason to sustain the opposite view. Thus instances may arise in which the rights of infants, married women, and others under disabilities may be in danger, where in proceedings personal to them, the services of attorneys are necessaries.[10] Where the services are necessaries, the infant, the husband, etc., respectively, will be responsible to the attorney for a reasonable compensation. This is as it should be, for were it otherwise, attorneys would not be as interested in matters concerning this class of persons, who, as a consequence, would probably often be taken advantage of—thereby defeating the purposes of the laws for their protection.

The Amount.—The relations between an attorney and his client should always be pleasant, not only during, but also after, such employment. The amount of the compensation asked by the attorney will be an important factor in maintaining this mutually beneficial relationship. No two cases, however, involve exactly the same amount of difficulty and labor, so clearly it would be a hard matter to declare certain hard and fast rules applicable to all cases. In view of this fact, a general rule has been adopted. The compensation allowed in implied agreements is such as will be considered reasonable. The same standard should be used in determining the amount under express agreements. What, then does this term "reasonable" mean? A person's time, whether that of an attorney or other skilled person, is worth about so much to him. Suppose he performs practically the same task for two clients—one of whom is poor, the other rich. Should this make any difference? Taking the standard above, it should not. While the attorney would be justified in aiding the poor man by charging somewhat less, yet he would not be justified in charging the rich man more, than a reasonable price. The basis of what is reasonable must, as a matter of course, be the services rendered and not the ability of the client to pay.[11]

Other circumstances will serve as important factors in fixing the amount of compensation, e. g., the labor involved. But while the labor of an attorney in conducting a case of peculiar nature or one wherein great values are at stake may be no greater than would be required in some other case of trifling import, yet the responsibility would be greater. The magnitude of the controversy will naturally tend to make its contest more vigorous. This should be taken into consideration in fixing the compensation as well between attorney and client as between parties in ordinary commercial transactions,[12] where the rule generally obtains. Another important factor will be the skill, experience, and standing of the attorney. The young attorney just admitted to the bar would not be justified in asking the same fees as one of greater experience, for he lacks the skill of the latter. Another element that should be considered is the measure of success achieved. When the client consults the attorney, he does so for the purpose of learning his rights and, if necessary, to vindicate them in the courts. Should there be but a partial success, if the attorney considers that he ought to give value for value, he should not charge as much as if success had been complete. In recapitulation, the following then are the factors which may determine the amount of compensation; nature and magnitude of the controversy; skill and labor required; skill, standing, and experience of the attorney; and the measure of success achieved.[13]

How Right May Be Affected.—While, as a general rule, an attorney is entitled to the compensation contracted for, this right may be affected in various ways. In contracting with the client, the attorney agrees that he will use his skill and will take proper precautions that the client's interests

(10) Barker v. Hibbard, 54 N. H. 539; MacDonald v. Wagner, 5 Mo. App. 56.

(11) Stevens v. Ellsworth, 63 N. W. (Ia.) 682.

(12) Smith v. C. & N. W. Ry. Co., 15 N. W. (Ia.) 291.

(13) Ibid; Stevens v. Ellsworth, 63 N. W. 682.

will be protected. This is a clear duty resting upon the attorney although not expressly mentioned in the contract, and the attorney is bound to a close observance of it. Hence if the attorney wrongfully conducts himself as when he stays away from the trial thereby causing a loss to his client, he forfeits his right to compensation. It would be inequitable for him to recover unless he had been properly relieved.[14] Thus also if an attorney represents one party in a negotiation, he cannot act for the adverse party as well and recover compensation from both. Such contracts are opposed to public policy.[15] This is true even if the attorney does so with good intentions unless with the knowledge and consent of both parties.[16] There would be a tendency to compromise instead of trying to secure the fullest measure of justice for the individual client, and to which the client is justly entitled—directly defeating the object of the employment.[17] So where an attorney, a member of a mercantile partnership, in the absence of special agreement, renders professional services to the partnership, he will be deemed to give them gratuitously; for where he has a personal interest in the result, whatever action he advises is primarily for his own good as well as that of the partnership.[18]

Fraud, misconduct, and undue influence are considered inequitable and should be deemed doubly so when one, who is thoroughly acquainted with this principle as a matter of law and equity, seeks to take advantage of another by these means. Thus where an attorney collects money and refuses to pay over the same when it is demanded by the client, without a legal reason therefor, fees will hardly be allowed him for making such collections.[19] For it would do the client little good to collect and not pay over. To compel him to go to court to get the money from his attorney, is to make him incur fees to other lawyers, and this would be a travesty upon the honor of attorneys. Again, an attorney should always see that the client understands the contract; no unfair or undue advantage should be taken, otherwise the attorney may lose his right to compensation.[20] Furthermore, the attorney agrees to do, not to fail to do, certain specified things in a skillful manner. If he is so negligent that no benefit results to the client, the attorney is not entitled to any compensation on account of the violation of his contract.[21] However, if an attorney, in good faith, uses his best endeavors to secure the desired results, yet no benefit accrues to the client, there is no good reason why he should not be paid for his service.[22]

The attorney has no right to abandon the contract without the consent of the client. To do so might work great injustice to the latter. The question involved might be an important one and the time lost by the abandonment of the attorney may mean success or failure in the particular case. Furthermore, even if it would not impose any greater risks of loss upon the client, the attorney should feel in honor bound to carry out the agreement. Hence, if he abandons without the consent of the client, he does not deserve compensation for what he may have done.[23]

Occasionally, however, circumstances may compel an attorney to withdraw from a case. As a rule, the client should have the right to select the attorney to take his place; but where the nature of the case demands immediate action, the attorney may secure a substitute. If the client accepts the benefit of the substitution, he becomes liable to the attorney first employed for the value of the services rendered. Should the client be dissatisfied with the substitution, it is his right and privilege to

(14) Douglass v. Eason, 36 Ala. 687.
(15) DeCells v. Brumson, 53 Cal. 372.
(16) MacDonal v. Wagner, 5 Mo. App. 56.
(17) Chatfield v. Simonson, 92 N. Y. 209.
(18) Vanduzer v. McMillan, 37 Ga. 299; Cicotte v. Church, 27 N. W. (Mich.) 682.
(19) Gray v. Conyers, 70 Ga. 349.
(20) Allard v. Lamirande, 29 Wis. 502.
(21) Armin v. Loomis, 51 N. W. (Wis.) 1097.
(22) Brackett v. Sears, 15 Mich. 244; Bills v. Polk, 4 Lea (Tenn.) 494.
(23) Tenney v. Berger, 93 N. Y. 524.

immediately refuse to accept the services of the substitute attorney. But in such case he should tender to the attorney employed by him the reasonable value of the services actually rendered and thereby rescind the contract of employment.[24] When the attorney dies after rendering beneficial services, it is meet and proper that the client pay their reasonable value. In the case of the death of the client, the employment should cease unless the contract called for services until the conclusion of the subject matter of employment. In the former case, the attorney would be entitled to a reasonable compensation for services rendered; in the latter, to the full contract price. But what effect has the death of a partner in a law partnership upon their contracts, and thus upon compensation? As a rule, there is no distinction between dissolution of a partnership by death of one of the members or in any other manner, yet such a distinction does exist to some extent in professional partnerships between attorneys and this distinction arises out of the peculiar nature of their engagements. The contract with the lawyer, the performance of which calls for the exercise of professional skill is personal in character. The services of the person employed are indispensable in the performance of the contract. Lawyers are employed in professional business because the client has confidence in their integrity and in their qualifications. If a firm is employed, the client has a right to the services of all its members. If one of them die, the engagement is at an end unless by its terms it is to subsist until the end. In either case the client is liable for services rendered. But if the work, e. g., collecting, does not call for the exercise of any professional skill, the engagement is not determined by the death of one of the partners.[25]

But what will be the result if the client steps in and prevents the fulfillment of the contract of employment? It seems that the attorney should be entitled to the full compensation agreed upon. For as Judge Sherwood says: "From the nature of the agreement; from the peculiar and confidential relations existing between the parties thereto; from the fact, that an attorney, when discharged by the client is prevented from accepting employment in the same cause by the adverse party; from the fact of its being practically impossible of determining the value of the attorney's services up to the time of dismissal; and from the fact of the impossibility of ascertaining the measure of damages; that these circumstances should exempt such a contract from those rules which prevail in cases of contracts differing so widely in these essential particulars from that under discussion, and should fix the measure of damages at price agreed to be paid."[26]

Actions to Enforce Payment.—Cases may arise in which the client will disagree with the attorney as to what constitutes a reasonable compensation for the services rendered. In such cases, it is advisable to try, if possible, to effect a compromise that will approximate a satisfactory compensation. But when client refuses to pay at all, what then? Legally there would be a right of action to recover for the value of the services rendered. As a general proposition, however, it is better that the attorney should be the loser than that he should contest publicly for his fees.

His general purpose is to settle controversies, not to stir up litigation. Nevertheless, where the labor expended, amount involved, and responsibility incurred are such that non-payment would be a serious injustice to the attorney, he has the right, and justly so, to sue for his compensation.

Conclusion.—Compensation, thus far, has been spoken of in the material sense. From this standpoint alone has it been considered; but, on reflection, it seems that the attorney must have a self-satisfaction in having performed his duties conscientiously. In other words, there is compensation—if such it may be called—higher than the ma-

(24) Fémo v. English, 22 Ark. 170.
(25) McGill v. McGill, 2 Metc. (Ky.) 258.
(26) Kersey v. Garton, 77 Mo. 645; accord Baldwin v. Bemett, 4 Cal. 392.

terial, physical one. It consists in the consciousness and gratification in having done one's duty to his fellow-men in promoting human well-being by striving for law and justice, so fundamentally important to society. And this compensation is not the least.

W. F. SCHULTE.

University of Missouri.

PARTNERSHIP—INDIVIDUAL DEBTS.

CONAWAY v. NEWMAN MILL & LUMBER CO.

Supreme Court of Arkansas, July 12, 1909.

An insolvent firm may mortgage its partnership property to secure individual in preference to partnership debts.

HART, J.: This is an action in equity, instituted in the Monroe chancery court by J. A. Conaway and Goldman & Co. against the Newman Mill & Lumber Company, R. L. Newman, J. D. Atkinson, and H. Greenwald. Goldman & Co. is a partnership composed of J. D. Goldman, W. L. Jeffries, and S. Bacharach. The Newman Mill & Lumber Company is a partnership composed of the plaintiff J. A. Conaway and the defendants R. L. Newman and J. D. Atkinson. They were engaged in operating a sawmill in Monroe county, Ark., during the year 1907. Their assets consisted chiefly of the sawmill outfit complete and 21 head of oxen, wagons, etc. On the 30th day of September, 1907, the members comprising the firm of the Newman Mill & Lumber Company executed a mortgage on their partnership property in favor of H. Greenwald to secure an indebtedness of $3,000. The indebtedness secured was the individual debt of R. L. Newman, one of the partners. During the course of operating the mill the Newman Mill & Lumber Company became indebted to various creditors, among whom were the plaintiffs Goldman & Co.

On the 18th day of December, 1907, Goldman & Co. brought suit against them for the sum of $755.89 in the Monroe circuit court, and sued out a writ of attachment against their property. The object of the present suit was to have the partnership of the Newman Mill & Lumber Company dissolved and its affairs wound up on account of insolvency, and to have the debt of Greenwald postponed until the partnership debts were settled. The appointment of a receiver was asked for, and J. B. Hagin was appointed receiver. He at once qualified and took charge of the property and assets of the firm. The complaint was filed December 30, 1907, and, in addition to the matters above set forth, alleged that the mortgage to Greenwald was procured by deceit and fraud. Greenwald answered the complaint, and denied that he had procured the execution of the mortgage by deceit and fraud. He also denied that the debt secured thereby was the individual debt of Newman, but averred it to be the debt of the partnership. Newman and Atkinson, although duly summoned, failed to answer. The chancellor found the issues in favor of the defendant Greenwald, and declared that his mortgage was a prior lien on the property embraced in it. A decree was therefore entered in his favor, in which the property was ordered sold and the proceeds applied, first, to the payment of his debt and interest, and the remainder, if any, to the other creditors of the Newman Mill & Lumber Company. Judgment was also rendered in his favor for his debt of $3,000 and the accrued interest. The plaintiffs have duly prosecuted an appeal to this court.

The Newman Mill & Lumber Company was insolvent at the time the mortgage to Greenwald was executed; but in the case of Reynolds v. Johnson, 54 Ark. 449, 16 S. W. 124, it was held that an insolvent firm may mortgage their partnership property to secure individual, in preference to partnership, debts. Counsel for plaintiffs urge us to overrule this case, and contend that it is against the weight of authority. The two lines of decisions were discussed in that opinion, and the rule above announced was deliberately adopted. It has been followed ever since by this court. It has become a rule of property, and we decline to disturb it.

It is also contended by counsel for plaintiffs that the mortgage of the Newman Mill & Lumber Company to Greenwald was procured by deceit. The testimony for the plaintiffs shows that, when the firm of the Newman Mill & Lumber Company was formed, Newman put in $1,500, Atkinson put in $500, and Conaway nothing; that the agreement between them was that Newman should be first paid back the amount paid in by him, with interest, and then that Atkinson in like manner should receive back the amount paid in by him; that at the time the mortgage in question was executed the amount, principal and interest,

owed to Newman was $1,600; that to induce them to sign the mortgage Greenwald told them that Newman would draw out of the firm if they did not execute the mortgage, but that if they did execute it he would advance the firm more money; that Newman had traded with Mrs. Greenwald for some hotel property, and the mortgage was in part payment of it; that Newman afterwards denied that he had authorized I. Greenwald, the husband and agent of H. Greenwald, to represent to plaintiff Conaway, that he would advance the firm more money.

Greenwald denied that he made the statement about Newman making further advances to the Newman Mill & Lumber Company, or withdrawing from the firm if the mortgage was not executed. This was not a false statement upon which fraud may be predicated. Such fraud must be of existing facts, or facts which previously existed, and cannot consist of mere promises as to future acts, although such promises are subsequently broken. The facts adduced in evidence by plaintiffs could only establish a breach of contract, but they do not sustain an action for fraud or deceit. The representations here complained of relate solely to promises as to matters in futuro. 20 Cyc. 20, and cases cited.

We find no prejudicial error in the record, and the decree will stand affirmed.

NOTE—*The Transfer by Insolvent Firm of its Property to Pay Individual Debts.*—The principal case refers to Reynolds v. Johnson without approving the principle there decided and holds that the question settled there has become a rule of property in Arkansas, the opinion there being based on Jones v. Fletcher, 42 Ark. 423, which asserts that such is the doctrine in Case v. Beauregard, 99 U. S. 119. The Beauregard decision went on the theory that the right of a creditor of a partnership to have its property previously transferred applied to payment of partnership debts in preference to those of an individual partner, is not a lien or trust, but an equity derived from the parties, enforceable and made effective, not in the right of the creditor, but only through the equity of the individual partner, to which the creditor is practically subrogated. It cannot be enforced by the creditor, if the partner is not in a condition to enforce it. If before the claim of the creditor is sought to be enforced by the creation of a trust in some mode "the property has ceased to belong to the partnership, if by a *bona fide* transfer it has become the several property either of one partner or a third person, the equities of the partners are extinguished, and consequently the derivative equities of the creditors are at an end."

To the same effect are Carver Gin Co. v. Bannon, 85 Tenn. 712, and National Bank of Sprague, 20 N. J. Eq. 13. The case of Thorpe v. Pennock Merc. Co., 99 Minn. 22, 108 N. W. 940 admits the insolvency of the partnership, but holds there was no intent to defraud its creditors in the formation of a corporation to which the assets of the partnership were transferred, and the opinion goes into the derivative equity theory quite extensively, saying: "The creditors have no lien upon the property. Their equity is a derivative one. It is not valid or enforceable in their own right," and it cites to this principle. Ex parte Ruffin, 6 Ves. Jr. 119; Ex parte Williams 11 Ves. 4; Campbell v. Mullett, 2 Swanst. 551; 1 Story Eq. Jur. 857; Francklyn v. Sprague, 121 U. S. 215, 30 L. Ed. 936. It is also said: "The authorities establish the rule that in the absence of fraud a partnership may sell and transfer the property of the firm and that the purchaser takes it free from any equities on the part of the simple creditors of the partnership," to which is cited Arnold v. Hageman, 45 N. J. Eq. 186, 17 Atl. 83, 14 Am. St. Rep. 712.

There are a number of cases which hold that transfer to a corporation organized by the partners to carry on the business is not in itself evidence of fraud. See Schumaker v. Davidson, 116 Iowa, 569, 87 N. W. 441; Kingman v. Mowry, 182 Ill. 256, 55 N. E. 330, 74 Am. St. Rep. 169; Densmore v. Strong, 98 Wis, 380, 74 N. W. 114. In Sawyers v. Tex, 78 Tex. 244, 14 S. W. 578, the facts show such a transfer with partners severally to hold stock proportioned to the partnership interest of each. The court said: "The contention of appellant is that because this was a mere conversion of the partnership into a corporation, and because nothing was paid for the property except the stock in the corporation, the conveyance of the land is to be deemed voluntary and fraudulent in law against existing creditors. To this proposition we do not assent. Its stock was a valuable consideration for property transferred to it, and such transfer was not per se fraudulent as against existing creditors, even though it had been shown that the partnership did not retain sufficient property to satisfy its debts." Other cases along this line are Coaldale v. State Bank, 142 Pa. St. 288, 21 Atl. 211; Bristol v. Jonesboro, 101 Tenn., 545, 48 S. W. 228.

These cases all go upon the theory that the transaction must be *bona fide*, and they may not perhaps be in square conflict with those supporting the text in Bump on Fraudulent Conveyances, sec. 369, 5th Ed. as follows: "An appropriation of firm property to pay the individual debt of one of the partners is, in effect, a gift from the firm to the partner, and the attempt to assign the partnership property to pay the private debts of one of the partners, before the firm debts are paid, when the firm is insolvent, affords a *conclusive* presumption of an actual fraudulent design on the part of debtors." The only cases, with one exception, cited to this are New York cases. In Blake v. Sargent, 152 Fed. 263, Philips, D. J., distinguishes between payment of one partner's debts by his transfer of assets, and then condemns the transfer before the court of one of two partners transferring to the other for a nominal consideration and the latter paying his debts with firm assets. The transaction was deemed a fraudulent scheme.

Assumption of Debts of Partnership by Corporation Succeeding it.—The reason why courts seem less inclined to regard as fraudulent the taking over of partnership assets by a cor-

poration in consideration of shares of stock given to the members, probably, lies in the views of courts of assumption of partnership debts by the corporation. In Du Vivier & Co. v. Gallice, 149 Fed. 118, 80 C. C. A. 556, the second circuit court of appeals, a very distinguished bench of that court sitting, decided that a corporation organized by the members of a partnership, to whom all the stock is issued, to take over all the property of the partnership and continue its business at the same place, is liable for the debts of the partnership, even though they are not expressly assumed. In Reed Bros. & Co. v. First Nat. Bank, 46 Neb. 168, 64 N. W. 701, it was ruled that where the members of an insolvent partnership incorporated and transferred the assets and business of the firm to the corporation and the corporation continued the business, the corporation in the absence of evidence to the contrary, assumed the partnership debts. Later the Nebraska court held that the purchase of a part of the assets of a partnership or a corporation by a new corporation, composed of the members of the old corporation or partnership, does not raise a conclusive presumption of its assumption of the debts of the old corporation or partnership, notwithstanding it continued to carry on the old business. Campbell v. Bank, 49 Neb. 143, 68 N. W. 344. But there seems much authority against this, and especially is it so, that joint and several liability of partners cannot thus be put away. Andres v. Morgan, 62 Ohio St. 236, 56 N. E. 875. In Baker Fur. Co. v. Hall, 76 Neb. 88, 107 N. W. 117, the assumption was held to go only to the extent of the value of the property taken over. In Connecticut it was held that even an express assumption of certain partnership debts in the deed of conveyance from the partnership to the corporation created no specific charge upon the property conveyed and partnership debts were postponed to corporation debts. Lamkin v. Lamkin & B. Mfg. Co., 72 Conn. 57, 43 Atl. 593. In Missouri the merger of a firm into a corporation with the same name as that of the firm and the latter's members the corporation's stockholders, a mechanics' lien could not be enforced where it was based on a running account beginning with the firm and ending with the corporation. The Du Vivier & Co. cites no authority and the general principle stated, if true, seems to be so in a qualified sense only.

C.

JETSAM AND FLOTSAM.

A TRIAL BY RICE.

They have peculiar methods of trying suspects in Bengal. One of these is called "Trial by Rice," says a writer in the September "Wide World Magazine." After a priest had been consulted as to an auspicious day, every person suspected and those who were usually near the place at night were ordered to be present at ten o'clock that morning. On that date all turned up. First the people were made to sit in a semicircle, and a "plate" (a square of plantain leaf) was set before each. Then a priest walked up and down chanting and scatmust be picked by a Brahmin, and they must tering flowers. These said flowers, by the way, be those which are facing the sun. This ceremony over, one of the clerks went to each man and gave him about two ounces of dry raw rice and told him to chew it to a pulp. Then commenced what looked like a chewing match. After about ten minutes had elapsed they were told to stop and eject it into the plantain leaf. All did so easily with the exception of three men. In the case of these three the chewed rice had in two cases become slightly moistened, but not sufficiently so to allow of its being easily ejected, and they had much ado to get rid of it. The third man had chewed his into flour and it came out as such, perfectly dry. One of these three men promptly commenced to cry and begging for mercy, confessing everything, and stating that man number three, who had acted as a kind of flour mill, was the chief instigator. It is a curious fact that fear, arising from an evil conscience, prevents saliva coming to the mouth, with the result described.

DAMAGE CAUSED BY SKIDDING OF MOTOR VEHICLES.

Motor vehicles having, in popular language, come to stay, it concerns the whole community to have the question of their owner's responsibility for skidding definitely settled. Yet the difference of judicial opinion revealed in the progress of Wing v. The London General Omnibus Company from the County Court to the Court of Appeals is so pronounced that only a decision of the House of Lords can effect this result. The jury found that the plaintiff, a passenger on the defendants' omnibus, was injured in consequence of a collision between it and an electric light standard, caused by the defendants' negligence in sending on to a greasy road a motor-omnibus which was liable to become uncontrollable, and did in fact become so. The county court judge nevertheless entered judgment for the defendants; a division court reversed this, but the court of appeal restored the original judgment last week by a majority. There is a concensus of expert opinion that neither careful driving nor any mechanical contrivance which has hitherto been devised will avail to prevent skidding when the roads become greasy; and this, coupled with the fact that motor-omnibuses have been running in London for many years, seemed to Lord Justice Vaughan Williams a sufficient reason for holding that there was no evidence either of negligence or of a nuisance. Yet, considering that on most days motor-omnibuses can be driven without the risk of skidding, such an inference from the fact that their use has not been prohibited does not seem to us a satisfactory one. Lord Justice Buckley declined to make it, and held that when a vehicle which usually confines itself to the roadway mounts the pavement without any fault on the driver's part, there is evidence of negligence in allowing it to run at all. It cannot be expected that motor traffic in the metropolis will be entirely stopped whenever the streets become wet—the inconvenience to the public would be too great. Yet it is just that the owner of a motor vehicle who puts it on a greasy road for his own purposes should be responsible for the effects of its inherent vice, whether under the law of negligence or of nuisance, or by some extension of the principle laid down in Fletcher v. Rylands.—The London Law Journal.

BOOK REVIEWS.

TIFFANY'S PERSONS AND DOMESTIC RELATIONS—SECOND EDITION. BY ROGER W. COOLEY.

Prof. Cooley, instructor in St. Paul College of Law, prepares this Second edition of this work of the Hornbook series principally because of later cases added and for changes in statutes as separate property of married women and for the prominence given questions as to extra-territorial effect of divorce.

These additions give the book an added value and serve to make it one of the best text-books in existence on this subject. It is especially a most desirable book for students, as its clear black letter outline conveys to the student strong impressions of the salient principles of the law of domestic relations.

Printed in one volume of 656 pages, bound in buckram and published by the West Publishing Co., St. Paul, Minn.

BOOKS RECEIVED.

The Penal Law and Code of Criminal Procedure of the State of New York, as Amended at the Close of the One Hundred and Thirty-second Session of the Legislature. 1909. Twenty-first Edition. Annotated by John T. Cook of the Albany Bar. Albany, N. Y. Matthew Bender & Company. W. C. Little & Company. 1909. Buckram. Price, $7.50. Review will follow.

Jewett's Manual for Election Officers and Voters in the State of New York, Containing the New Consolidated Election Law, Federal and State Constitutional Provisions Concerning Elections and Elective Officers, etc., as Amended to Date, together with Annotations, Forms and Instructions. By F. G. Jewett, Former Clerk to the Secretary of State. Seventeenth Edition, completely revised and enlarged by Melvin Bender and Harold J. Hinman, of the Albany Bar, Editors of Street Railway Reports, Annotated, Bender & Hinman's Bankruptcy Digest, etc. Albany, N. Y. Matthew Bender & Co. 1909. Buckram. Price, $4.00. Review will follow.

A Treatise on the Business Corporation Law of the State of New York, including therein a Text-book on the Incorporation, Organization and Management of Business Corporations; Annotated Text of the General, Business, Stock and Transportation Company Acts, together with Forms and Precedents Relative to the Incorporation, Organization, Management, Consolidation and Dissolution of Business Corporations Organized Under the Statutes of the State of New York. By Thomas Gold Frost, LL. D., Ph. D. of the New York City Bar. Albany, N. Y. Matthew Bender & Co. 1909. Buckram. Price, $6.00. Review will follow.

The American State Reports, Containing the Cases of General Value and Authority Subsequent to those Contained in the "American Decisions" and the "American Reports," decided in the Courts of Last Resort of the Several States. Selected, Reported, and Annotated. By A. C. Freeman. Volume 126. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1909. Review will follow.

The Encyclopedia of Evidence. Edited by Edgar W. Camp. Vol. 13. Los Angeles, Cal. L. D. Powell Company. 1909. Sheep. Price, $6.00. Review will follow.

CORRESPONDENCE.

A correspondent informs us that he has just been served with a copy of a petition, the second count of which reads as follows:

"Plaintiff for his second cause of action states that on the thirtieth day of March, A. D., 1909, the defendant did by words and actions make an indecent proposal to plaintiff by resorting to artifices such as rattling the money in his pockets to clearly indicate the real purpose in his visit, and which was as much as to say: 'What is your price?' and by reason of the publication of these acts by the defendant the plaintiff has suffered the loss of her social and moral standing in the neighborhood and community in which she resides. Plaintiff has lost her good name and reputation, all being due to the publication of same by defendant and by reason thereof the plaintiff has been damaged in the second count in the sum of two thousand, five hundred dollars for her actual damages and in the further sum of two thousand, five hundred dollars for her punitive damages and for which plaintiff prays judgment for the sum against defendant for the sum of five thousand dollars and for her costs laid out and expended in this cause."

HUMOR OF THE LAW.

Once when Baron Bramwell was sitting on the crown side of the South Wales circuit, counsel for the defense in a certain case asked leave to address the jury in Welsh. The desire being a simple one, permission was given without demur. He said but very few words. The baron also did not think much comment was necessary, but was somewhat startled by the prompt verdict of acquittal.

"What was it," he afterward inquired, "that Mr. L. said to the jury?"

"Oh, he just said: 'This case, gentlemen, lies in a nutshell. You see yourselves exactly how it stands. The judge is an Englishman, the complainant is an Englishman, but you are Welsh, and I am Welsh, and the prisoner is Welsh. Need I say more? I leave it all to you.'"—Law Notes.

A wizened little man charged his wife with cruel and abusive treatment. His better half, or in this case better two-thirds, was a big, square-jawed woman with a determined eye.

The judge listened to the plaintiff's recital of wrongs with interest.

"Where did you meet this woman who, according to your story, has treated you so dreadfully?" his honor asked.

"Well, judge," replied the little man, making a brave attempt to glare defiantly at his wife, "I never did meet her. She just kind of overtook me."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort and of all the Federal Courts.

1. **Accident Insurance**—Construction of Policy.—Any ambiguity in an accident policy should be construed in favor of the insured, since the language is that of the insurer.—Wilkinson v. Aetna Life Ins. Co., Ill., 88 N. E. 550.

2. **Accord and Satisfaction**—Part Payment of Undisputed Claim.—Where one owes a fixed sum, a payment of a less sum, accompanied by the statement that it is in full, accepted by the creditor, does not defeat a collection of the balance.—Cunningham v. Standard Const. Co., Ky., 118 S. W. 765.

3. **Associations**—Action Against Unincorporated Society.—An unincorporated association cannot be sued in the company name.—Farmer's Mutual v. Reser, Ind., 88 N. E. 349.

4. **Bankruptcy**—Ownership of Property.—The purchaser at a bankrupt sale must take notice that nothing is sold except the bankrupt's interest.—Asheville Supply & Foundry Co. v. Machin, N. C., 64 S. E. 887.

5.——Promise to Pay Debt.—A promise to pay a pre-existing debt, made by a bankrupt after adjudication, but before his discharge, is not impaired thereby.—Dicks v. Andrews, Ga., 64 S. E. 788.

6. **Banks and Banking**—Knowledge of Cashier as Notice to Bank.—The knowledge possessed by the cashier of a bank must be attributed to the bank, and, where the cashier had any information which was sufficient to put him on inquiry, the bank was bound to make the inquiry.—Groff v. Stitzer, N. J., 72 Atl. 970.

7. **Benefit Societies**—Beneficiaries.—The designation in a mutual benefit certificate of a beneficiary not within any of the classes named in the constitution of the society held void.—Meyer v. Grand Lodge of Order of Sons of Herman of Minnesota, Minn., 121 N. W. 235.

8. **Bills and Notes**—Bona Fide Purchaser.—Fraudulent representations inducing the execution of accommodation paper are no defense against a bona fide purchaser for a valuable consideration without notice.—Keenan v. Blue, Ill., 88 N. E. 553.

9.——Bona Fide Purchasers.—If a bank paying a check drawn by a depositor's cashier in the depositor's name and payable to the depositor's agent knew, or ought to have known by reasonable care, that the check was one of a series of "kiting" checks which the agent and cashier were issuing for their own benefit, it could not recover from the depositor for the amount paid thereon.—Farmers' & Merchants' Bank of Williamston v. Germania Life Ins. Co., N. C., 64 S. E. 902.

10.——Consideration.—As against the accommodated party to an accommodation note, the maker may set up as a defense that he signed the note for accommodation merely, and that there was no consideration therefor.—Boqua v. Brady, Ark., 118 S. W. 677.

11.——Consideration.—Where a note is proved to have been put into circulation fraudulently, the holder held required to show the consideration paid and how it came into his hands.—Schultheis v. Sellers, Pa., 72 Atl. 887.

12.——Illegal Consideration.—Under Code 1907, Sec. 3338 (Code 1896, Sec. 2163), contracts for the sale of future cotton, in which actual delivery is not contemplated, held void not only as to the parties, but as to innocent purchasers for value.—Birmingham Trust & Savings Co. v. Curry, Ala., 49 So. 319.

13.——Presumptions.—Mere possession by the payer of a note, without any indorsement thereon, is not evidence of payment, unless it appear that it was delivered to the payee.—Pool v. Anderson, N. C., 64 S. E. 593.

14. **Carriers**—Delay in Delivering Freight.—On delay of carrier to deliver freight, held, the owner is not entitled to refuse to accept it and sue for its value, but must take it and sue for damages.—Chicago, R. I. & P. Ry. Co. v. Albert Pfeifer & Bro., Ark., 118 S. W. 642.

15.——Loss Caused by Vicious Animals.—A carrier is not responsible for injuries to animals resulting from their vicious propensities.—Foust v. Lee, Mo., 118 S. W. 505.

16.——Refusal to Receive Freight.—That a shipper presented goods for shipment to Scottsville, Tenn., when the real name of the town on defendant's line was Scottville, Tenn., would not relieve the carrier from the statutory penalties for refusal to receive goods for shipment thereto.—Reid & Beam v. Southern Ry. Co., N. C., 64 S. E. 874.

17.——Regulation.—The state has power to impose penalties upon carriers for failure to discharge public duties, provided they are not so enormous that the carrier is prevented from resorting to the courts to determine the validity of the statute.—Garrison v. Southern Ry. Co., N. C., 64 S. E. 578.

18. **Constitutional Law**—Performance of Contract.—Where the performance of a contract becomes impossible by a change in the law, the promisor is discharged.—Burgett v. Loeb, Ind., 88 N. E. 346.

19. **Contracts**—Ownership of Stock.—Any

agreement which separates the beneficial ownership of corporate stock from the legal title is contrary to public policy and void, and restrictions on the right to vote stock are not favored by the courts.—Sheppard v. Rockingham Power Co., N. C., 64 S. E. 894.

20.——Rescission.—Where a building contract provides for payment in a gross sum upon completion of the building by a day fixed thereby, and the contractor fails to complete it by that time, the owner may rescind the contract.—Richard Deeves & Son v. Manhattan Life Ins. Co., N. Y., 88 N. E. 395.

21. **Corporations**—Authority of Agent.—Employment of physician for injured employee of railroad company by "assistant law agent" of the company held reasonably incidental to his duties, so as to make the determination of whether he acted within the scope of his authority a matter of proof.—Southern Ry. Co. v. Hazlewood, Ind., 88 N. E. 636.

22.——Authority of Officers.—The general manager of a corporation was not authorized, by virtue of his position, in the absence of any showing of special authority, to disclaim the corporation's right and title to property at a bankruptcy sale.—Asheville Supply & Foundry Co. v. Machin, N. C., 64 S. E. 887.

23.——Foreign Corporation's Right to Sue.—A foreign corporation need not, when suing, allege compliance with the state laws; compliance therewith being matter of defense.—Groneweg v. Schmoentgen Co. v. Estes, Mo., 118 S. W. 513.

24.——Right to Vote Stock.—As a general rule, a corporate stockholder may vote his stock as he pleases as long as it is not voted for the purpose of oppressing or defrauding minority stockholders.—South & N. A. R. Co. v. Gray, Ala., 49 So. 347.

25.——Stock Voting Trust.—A corporation cannot put its own stock into a voting trust, nor identify itself with their interests by binding itself to assume the expenses incident thereto.—Clark v. National Steel & Wire Co., Conn., 72 Atl. 930.

26. **Costs**—Remedies for Collection.—A state court should not enforce the collection of costs in the federal courts by penalizing suitors in the state court for failure to pay costs in the federal courts.—Webb v. Pacific Mut. Life Ins. Co. of California, Mo., 118 S. W. 491.

27. **Courts**—Jurisdiction Over Interstate Shipments.— Where an interstate carrier represents that a certain freight rate is established between two points and the shipper is thereafter coerced into paying a higher rate, a state court has jurisdiction to determine his suit to recover the amount overpaid.—Pine Tree Lumber Co. v. Chicago, R. I. & P. Ry. Co., La., 49 So. 202.

28. **Damages**—Computation.—While mortality tables may be used in estimating the pecuniary injury to a person's estate from his personal injuries, they are not a proper basis for computing his future suffering, and the expenses he will be put to, or other prospective damages.—Canfield v. Chicago, R. I. & P. Ry. Co., Iowa, 121 N. W. 186.

29.——Discretion of Jury.—Punitive damages held not recoverable as matter of right, but to be discretionary with the jury; the discretion being a legal and sound one, and not to be exercised arbitrarily.—Coleman v. Pepper, Ala., 49 So. 310.

30. **Deeds**—Capacity to Convey.—Incapacity to understand the business transacted, as distinguished from mere weakness, must be proved, in order to avoid a conveyance.—Stanfill v. Johnson, Ala., 49 So. 223.

31.——Consideration.—A deed in consideration of the support of the grantor and payment of one-half of the income may be canceled on failure of the grantee to perform his part of the contract.—Cumby v. Cumby, Ill., 88 N. E. 549.

32.——Delivery.—Delivery is essential to the validity of a deed.—Hearn v. Purnell, Md., 72 Atl. 906.

33.——Signature.—Where it is shown that a person purporting to have signed a deed could not write, there is no presumption that he authorized some other person to sign for him.—Hansen v. Owens, Ga., 64 S. E. 800.

34. **Descent and Distribution**—Advancement.—Declarations of donor that conveyances are advancements are incompetent, unless made before, at the time, or immediately after the transaction, and a part of the res gestae.—Stauffer v. Martin, Ind., 88 N. E. 363.

35. **Divorce**—Alimony.—It is a settled principle of equity that the fact conferring power to award alimony pendente lite and suit money is that the wife is destitute of sufficient means to meet such charges.—Rutledge v. Rutledge, Mo., 118 S. W. 489.

36. **Embezzlement**—Defenses.—On a charge against the prison clerk of embezzling money of convicts, it is immaterial that they did not voluntarily place the money with him, but were required to do so by the prison commissioners.—Roland v. Commonwealth, Ky., 118 S. W. 760.

37. **Equity**—Decree Pro Confesso.—Decree pro confesso admits the truth of definite allegations of fact, and the allegations and the exhibits made a part thereof may be considered in determining the rights of the parties.—Hale v. Yeager, Fla., 49 So. 544.

38.——Multifarious Bill.—A bill to enjoin an additional issue of corporate stock, and to wind up the corporation because of alleged insolvency, held demurrable for multifariousness.—Rodman v. Manganese Steel Safe Co., N. J., 72 Atl. 963.

39. **Estoppel**—Ownership of Property.—The true owner of property may be estopped by his acts and declarations from asserting his title as against a purchaser from one having no title.—Asheville Supply & Foundry Co. v. Machin, N. C., 64 S. E. 887.

40.——Position Assumed.—A party who has, with knowledge of the facts, assumed a particular position in judicial proceedings, is estopped to assume a position inconsistent therewith, to the prejudce of the adverse party.—Brown v. French, Ala., 49 So. 255.

41. **Evidence**—Admissibility.—An officer of a mutual benefit association could be asked whether an insured was reinstated as provided by the by-laws in order to show that he had not been reinstated; since, if he was not reinstated, there was no record of that fact.—United Order of the Golden Cross v. Hooser, Ala., 49 So. 354.

42.——Contemporaneous Agreement.—As between the original parties to a note, a recovery may be defeated by showing a contemporaneous parol agreement which has been violated by the payee.—Faux v. Fitler, Pa., 72 Atl. 891.

43.——Judicial Evidence.—Judicial notice is merely a rule of evidence; and, if facts judicially noticed are disputable, the other party may

rebut them.—Timson v. Manufacturers' Coal & Coke Co., Mo., 118 S. W. 565.

44.——Judicial Notice.—Judicial notice will be taken that gas, unlike oil, cannot be brought to the surface and stored to await a market for it.—Eastern Oil Co. v. Coulehan, W. Va., 64 S. E. 836.

45. Judicial Notice.—The judicial recognition of facts without proof should be exercised with caution, and care taken that the requisite notoriety exists, and every reasonable doubt whether sufficient notoriety exists should be resolved in the negative.—Timson v. Manufacturers' Coal & Coke Co., Mo., 118 S. W. 565.

46.——Parol Evidence Affecting Writings.—It is competent to show by parol that a written contract was subsequently abandoned, modified, or a new contract substituted.—Germantown Dairy Co. v. McCallum, Pa., 72 Atl. 885.

47.——Reading Medical Books to Jury.—It is reversible error to permit counsel, on cross-examination of a medical expert, to read from a medical book.—Foley v. Grand Rapids & I. Ry. Co., Mich., 121 N. W. 257.

48.——Sufficiency.—On the introduction of secondary evidence, it is only necessary to prove the substance of the material facts.—Robinson v. Singerly Pulp & Paper Co. of Cecil County, Md., 72 Atl. 828.

49. **Equitable Title**—Execution.—An equitable title will support a claim by third persons under the statute on the trial of the right of property levied on under an execution.—E. Strickland & Co. v. Lesesne & Ladd, Ala., 49 So. 233.

50. **Executors and Administrators**—Rights of Heir.—The administrator of an incompetent leaving no debts has no interest in the real estate, but it descends to the heir, who alone may sue to set aside a conveyance made by the incompetent.—Kamman v. D'Heur & Swain Lumber Co., Ind., 88 N. E. 348.

51.——Sale of Land.—Where land is sold to pay debts, any surplus goes to the heir who would have taken the land.—Kolars v. Brown, Minn., 121 N. W. 229.

52. **Frauds, Statute of**—Debts of Another.—An oral promise by one corporation to pay for the services of a transfer agent of another held within the statute of frauds.—Clark v. National Steel & Wire Co., Conn., 72 Atl. 930.

53.——Sufficiency of Memorandum.—A check given in payment of a passway over land alleged to have been granted by an oral agreement was insufficient to take the agreement out of the statute of frauds; it not being signed by the party to be charged, and not identifying or describing the passway.—Allen v. Stiley, Ky., 118 S. W. 755.

54. **Garnishment**—Property Subject.—A fund held as indemnity held not subject to garnishment.—Cope v. Shoemate, Mo., 118 S. W. 503.

55. **Gifts**—Trusts.—To create a trust, there must be an expression of an intention not to create a present gift, but to become a trustee.—In re Ashman's Estate, Pa., 72 Atl. 899.

56. **Guaranty**—Liability of Guarantors.—Individuals promoting a company who agreed with a subscriber that he was to have his money back if the company to be organized did not establish a tiling plant within a year held guarantors of the performance of the agreement by the company.—Broadus v. Russell, Ala., 49 So. 327.

57. **Homestead**—Selection.—Where one owning several tracts of land adjoining wishes to select his homestead, the tracts must be considered as one, and he may select any part thereof not embracing more than 200 acres.—Watkins Land Co. v. Temple, Tex., 118 S. W. 728.

58. **Highways**—Use by Automobiles.—The general rules governing the movement of automobiles, except as modified by statute, held to be the same as those formulated for the government of wagons.—Mark v. Fritsch, N. Y., 88 N. E. 380.

59. **Husband and Wife**—Building Erected on Wife's Land.—Where a building is erected on the property of the wife, and the contract is made with the husband, the wife's property held chargeable in equity for the agreed price.—McGill v. Art Stone Const. Co., Fla., 49 So. 539.

60.——Estate by Entireties.—Under a conveyance of land in fee to husband and wife, they take by entireties with right of survivorship.—Hood v. Mercer, N. C., 64 S. E. 897.

61.——Wife's Right to Support and Maintenance.—The obligation of a husband to support and maintain his wife is modified by law to the extent that it obtains while she properly demeans herself as a wife and companion.—Rutledge v. Rutledge, Mo., 118 S. W. 489.

62. **Indictment and Information**—Bill of Particulars.—A bill of particulars cannot supply a defect in the indictment.—State v. Cline, N. C., 64 S. E. 591.

63. **Infants**—Disaffirmance of Contract.—Palpable fraud by minor feme covert held to preclude her from disaffirming deeds executed by her without restoring the consideration.—Ackerman v. Hawkins, Ind., 88 N. E. 616.

64. **Interpleader**—Conflicting Claims to Fund.—Where a policy of life insurance is payable to a person named, as wife of insured, and on his death two women claim to be the person so named, the insurance company can maintain interpleader.—Bayerischen National Verband Von Nord Amerika v. Knaus, N. J., 72 Atl. 952.

65.——Conflicting Claims to Property in Warehouse.—A bailee cannot compel strangers to interplead, where each claims the property adversely without any privity of title.—New Jersey Title Guarantee & Trust Co. v. Rector, N. J., 72 Atl. 968.

66. **Intoxicating Liquors**—"Near Beer."—Ordinance regulating the sale of "near beer" held not unconstitutional as making an arbitrary classification.—Campbell v. City of Thomasville, Ga., 64 S. E. 815.

67. **Joint Adventures**—Corporate Underwriters.—Underwriters of corporations organized to exploit certain mining properties held quasi partners, and not in a strict fiduciary relation.—Runkle v. Burrage, Mass., 88 N. E. 573.

68.——Mutual Rights and Liabilities.—Two or more persons associated in a joint enterprise held to stand in a relation of confidence analogous to that between partners.—Berry v. Colborn, W. Va., 64 S. E. 636.

69. **Judgment**—Conclusiveness.—A proceeding properly taken in a state to determine the liability of stockholders of an insolvent domestic corporation is conclusive on all the stockholders, though some of them are non-residents.—Miller v. Aldrich, Mass., 88 N. E. 441.

70.——Conclusiveness.—Parol evidence held admissible to show that a former suit between the same parties involved matters in issue in the suit on trial, and which were necessarily

determined by the first judgment.—Iguano Land & Mining Co. v. Jones, W. Va., 64 S. E. 640.

71.——By Confession.—A stipulation in a warrant for the confession of a judgment on a note that the maker would pay attorney's fees held based on a sufficient consideration.—Keenan v. Blue, Ill., 88 N. E. 553.

72.——Entry by Clerk in Vacation.—The clerk of court has no power to enter a judgment in the minutes after adjournment of the term in view of Rev. St. 1895, art. 1087, and a judgment so entered will not support an execution.—Hubbart v. Willis State Bank, Tex., 118 S. W. 711.

73.——Res Judicata.—The subject-matter of the prior action, and not its form, is a controlling element in determining the force of a plea of former adjudication.—United Oil & Gas Co. v. Ellsworth, Ind., 88 N. E. 362.

74. **Landlord and Tenant**—Holding Over by Lessee.—Where a lessee holds over, his liability in damages is measured by the rental market value of the property.—Jackson Brewing Co. v. Wagner, La., 49 So. 529.

75.——Leases.—A lease of premises for five years for saloon purposes only held not invalid as against public policy, though the statutes make it unlawful to retail intoxicating liquor without a license, and provide for the granting of a license for one year only.—Burgett v. Loeb, Ind., 88 N. E. 346.

76. **Limitation of Actions**—Commencement of Action.—A declaration failing to aver a cause of action held not to stop limitations as to amended or additional counts.—Walters v. City of Ottawa, Ill., 88 N. E. 651.

77. **Logs and Logging**—Sale of Standing Timber.—Sale of standing timber, to be severed before title passes, held an executory sale of personal property, and not an interest in land.—Clarke Bros. v. McNatt, Ga., 64 S. E. 795.

78. **Mandamus**—Injury to Servant.—Where a master or his authorized agent in charge of the work knew that a stone was of too great weight to be lifted safely with the derrick by the master, and with such knowledge made an attempt, and thereby caused injury to a servant, the master could not escape liability on the sole ground that fellow servants were also guilty of negligence.—Romona Oolitic Stone Co. v. Shields, Ind., 88 N. E. 595.

79. **Master and Servant**—Duty to Observe Defects.—Though the master has a better opportunity than his servant to inspect appliances, the servant is required to exercise care to observe defects, especially where the appliances are of simple construction.—Vandalia R. Co. v. Adams, Ind., 88 N. E. 353.

80.——Fellow-Servants.—A railroad company is liable for injuries to a fireman caused by the engineer's negligence in giving orders within the scope of his authorty to control the fireman's services.—Stephens v. Southern Ry. Co., S. C., 64 S. E. 601.

81.——Fellow-Servants.—A section foreman, representing the railroad company, held not a fellow servant of a brakeman.—Lincoln v. Central Vermont Ry. Co., Vt., 72 Atl. 821.

82.——Negligence.—A stitcher in a shoe factory injured by her dress being caught on a revolving shaft, may show that skirt boards were generally provided in the factory and that there was none at her bench.—Warburton v. N. B. Thayer Co., N. H., 72 Atl. 826.

83. **Mortgages**—Merger and Revisor.—Where title of mortgagee is merged in deed supposed to convey perfect ownership, but which proves imperfect, the mortgage revives.—Pugh v. Sample, La., 49 So. 526.

84.——Subsequently Acquired Property.—A mortgage may be made to cover subsequently acquired property.—People's Trust Co. v. Schenck, N. Y., 88 N. E. 647.

85. **Municipal Corporations**—Action on Bond of Official.—A surety on the bond of a town collector held liable for a loss sustained resulting from the collector depositing money in a bank which became defunct.—Town of Cicero v. Hall, Ill., 88 N. E. 476.

86.——Common Law Rule as to Transitory Actions.—At common law, municipal corporations could not be sued outside of their own courts upon transitory causes of action.—Phillips v. City of Baltimore, Md., 72 Atl. 902.

87.——Easements in Streets.—The public easement in a street includes the use of the land below the surface, as well as the use of the surface, and a tunnel is a proper street use.—Fifty Associates v. City of Boston, Mass., 88 N. E. 427.

88.——Knowledge as to Defective Streets.—Knowledge by a municipality of a defect in a street may be shown by its continuance for so long a time as to create a presumption of knowledge.—City of Burnside v. Smith, Ky., 118 S. W. 744.

89.——Torts.—The maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by a sewer which emptied into it.—Metz v. City of Asheville, N. C., 64 S. E. 881.

90.——Water Frontage of Street.—A public street leading to navigable waters keeps pace with the extension of the land.—Frater v. Baylen Street Wharf Co., Fla., 49 So. 188.

91. **Negligence**—Contributory Negligence.—Where the evidence of contributory negligence springs out of and form a part of the case relied on by plaintiff, the burden is on him to show freedom from contributory negligence.—Chicago, R. I. & G. Ry. Co. v. Clay, Tex., 118 S. W. 730.

92.——Pleading.—In common-law actions, the basis of which is defendant's negligence, negligence or its equivalent must be directly averred, or facts stated which will raise a presumption of negligence.—Cobe v. Malloy, Ind., 88 N. E. 620.

93.——Res Ipsa Loquitur.—The doctrine of res ipsa loquitur held an exception to the general principle that negligence will not be presumed, but must be affirmatively shown.—Seitzinger v. Burnham, Pa., 72 Atl. 898.

94. **New Trial**—As to One Co-Party.—Where severable judgments were rendered in a joint action against several defendants, a grant of a new trial as to one defendant does not set aside or affect the judgment as to the other defendant.—Texas & P. Ry. Co. v. Moore, Tex., 118 S. W. 697.

95. **Notice**—Facts Putting on Inquiry.—Knowledge of any facts and circumstances reasonably calculated to put one on inquiry makes it his duty to make inquiry, and he will be charged with notice of all facts which such inquiry would have elicited.—Farmers' & Merchants' Bank of Williamston v. Germania Life Ins. Co., N. C., 64 S. E. 902.

96. **Officers**—Title to Office.—A prior incum-

bent of an office who has ceased to have color of title thereto cannot be an officer de facto.—Chandler v. Starling, N. D., 121 N. W. 198.

97. **Parent and Child**—Earnings of Child.—In the absence of evidence of emancipation, it will be assumed that the father is entitled to the proceeds of the labor of his infant son.—Winebremer v. Eberhardt, Mo., 118 S. W. 530.

98. **Partnership**—Limited Partnerships.—The law governing corporations, rather than that applicable to partnerships, is applicable to limited partnerships.—Armstrong v. Sterns, Mich., 121 N. W. 312.

99.——Rights of Silent Partner.—As between innocent purchaser for value of a pawnbroker's business from the active partner and a silent partner, the latter should suffer.—Bullard v. Davis, Fla., 49 So. 541.

100. **Payment**—Application.—Where the debtor fails to direct the application of payments on the debt, the creditor may appropriate them as he desires.—Benson v. Reinshagen, N. J., 72 Atl. 954.

101.——Note as Payment.—Giving a note for a debt held not payment, unless there is an express agreement to that effect or circumstances authorizing such an inference.—King v. McConnell, Fla., 49 So. 539.

102. **Pleading**—Bill of Particulars.—A bill of particulars is not a pleading in any court. It may restrict, but cannot enlarge, the scope of recovery permissible under the declaration, and the issue made by the pleadings is not changed by its amendment.—Applebaum v. Goldman, Mich., 121 N. W. 288.

103.——Demurrer.—A demurrer, filed after an amended complaint was filed, must be treated as a demurrer to the amended complaint, though the pleading to which it was addressed is styled the complaint.—Chicago, I. & L. Ry. Co. v. Stepp, Ind., 88 N. E. 343.

104. **Pledges**—Sale of Goods.—Sale of stock pledged to secure indorsement of note on ground of alleged failure of consideration will not be enjoined.—Cooper v. National Fertilizer Co., Ga., 64 S. E. 650.

105. **Principal and Agent**—Ratification.—A principal cannot affirm the action of his agent in making a sale and not assume responsibility for his representations in respect thereto.—Schultheis v. Sellers, Pa., 72 Atl. 887.

106. **Principal and Surety**—Rights of Surety.—A surety can proceed in equity against his principal any time after the debt has fallen due to compel payment, though he may not have been sued.—Cooper v. National Fertilizer Co., Ga., 64 S. E. 650.

107. **Quieting Title**—Persons Entitled to Maintain Bill.—To entitle a person to maintain a bill to remove or prevent a cloud upon title, he must be the owner of either the legal or equitable title, and a mortgagee is neither.—Peninsular Naval Stores Co. v. Cox, Fla., 49 So. 191.

108. **Quo Warranto**—Pleadings.—An information in the nature of quo warranto filed by the Attorney General to test the right to a public office or to a franchise need only allege generally that defendant holds the office or enjoys the franchise without lawful authority; and the burden is on defendant to show a complete legal right to the privileges in question.—State ex rel. Union Electric Light & Power Co. v. Grimm, Mo., 118 S. W. 626.

109. **Railroads**—Limitation of Liability.—Contract between express company and employee agreeing to release railroad from liability for any injuries sustained held valid.—Piper v. Boston & M. R. R., N. H., 72 Atl. 1024.

110. **Sales**—Breach of Warranty—Manufacturer selling defective goods held not liable on his warranty where they are resold by the purchaser with knowledge of the defects.—Cooper v. National Fertilizer Co., Ga., 64 S. E. 650.

111.——Conditional Sales.—The mere record of a conditional sale, authorizing the buyers to sell the property to purchasers, who should make checks payable to the seller, held not to impose on a purchaser from the buyers the duty of seeing that the seller received the proceeds of the sale.—Clarke Bros. v. McNatt, Ga., 64 S. E. 795.

112.——Lien for Price.—Where plaintiff shipped certain lumber to its own order, and then directed the carrier to deliver to the buyer, plaintiff's lien for the price was terminated.—Norfolk Hardwood Co. v. New York Cent. & H. R. R. Co., Mass., 88 N. E. 664.

113.——Option Contracts.—An option contract not fixing the time within which the option shall expire held not to expire until after the lapse of a reasonable time.—New England Box Co. v. Prentiss & Wilder, N. H., 72 Atl. 826.

114.——Warranty as to Title.—The sale of a chattel in possession is an implied warranty of the seller's title.—Dierling v. Pettit, Mo., 118 S. W. 524.

115. **Street Railroads**—Use of Streets.—Neither a driver nor a street railway company possesses a superior right to the part of the street occupied by the tracks, but drivers of vehicles must leave the track to permit the passage of cars.—Gessner v. Metropolitan St. Ry. Co., Mo., 118 S. W. 528.

116. **Subrogation**—Discharge of Secondary Liability.—One who discharges a secondary liability held entitled by subrogation to the securities of him who is primarily liable.—Smith v. Folsom, Ohio, 88 N. E. 546.

117. **Taxation**—Public Lands.—When full equitable title to public lands has passed out of the United States, and not until then, the lands become subject to state taxation.—Price v. Dennis, Ala., 49 So. 248.

118. **Trusts**—Equitable Jurisdiction.—Where a trust is reposed in the executors of a will, they may seek the aid of equity in the management and execution of the trust.—Strawn v. Trustees of Jacksonville Female Academy, Ill., 88 N. E. 460.

119.——Statute of Frauds.—Verbal promise to hold legal title of land in trust and to reconvey on demand held void under the statute of frauds.—Henderson v. Murray, Minn., 121 N. W. 214.

120. **Vendor and Purchaser**—Abstract of Title.—An abstract of title showing the foreclosure of a mortgage by advertisement, without showing that the mortgage contained a power of sale, does not show a good title.—Bryan v. Straus Bros. & Co., Mich., 121 N. W. 301.

121. **Warehouseman**—Storage of Grain.—A warehouseman engaged in the storage of grain is bound in the exercise of reasonable care to make reasonable inspection from time to time to see that the building remains safe and in proper condition.—Buffalo Grain Co. v. Sowerby, N. Y., 88 N. E. 569.

122. **Wills**—Construction—Where a will was not the product of a skilled draftsman or of a person familiar with legal terms, care must be taken so that too great emphasis will not be placed on a precise construction of the language used.—Perry v. Bulkley, Conn., 72 Atl. 1014.